

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
February 24-25, 2016**

**Agenda Item Title:** New rule concerning the Youth Empowerment Services (YES) Waiver program.

**Agenda Number:** 4.i.

**Recommended Council Action:**

☐ For Discussion Only

☒ For Discussion and Action by the Council

**Background:**

The Youth Empowerment Services (YES) Waiver is part of the Mental Health and Substance Abuse Services Division of DSHS. The YES Waiver provides comprehensive home and community-based mental health services to children, ages 3 through 18, up to a child's 19<sup>th</sup> birthday, at risk of institutionalization and/or out-of-home placement due to their serious emotional disturbance (SED).

YES Waiver services are provided through comprehensive waiver providers contracted with DSHS. A comprehensive waiver provider is permitted to subcontract waiver services. Currently, there are 786 children enrolled in the waiver. There are six Medicaid-funded sites, 29 general revenue sites, and 3 hybrid-funded sites. Hybrid-funded sites have some counties in its service area that are Medicaid-funded and other counties in its service area that are general revenue funded. It is anticipated that all YES Waiver sites will be Medicaid-funded by spring 2016, pending approval of an amendment to the waiver by the Centers for Medicare and Medicaid Services (CMS).

**Summary:**

The purpose of the rule is to ensure that interested individuals have timely and fair access to YES Waiver services and to reduce the number of children with SED relinquished to the conservatorship of the state. The new rule addresses the maintenance of a YES Waiver inquiry list, including:

- how a child, adolescent, or legally authorized representative (LAR) may submit a request to add a child or adolescent's name on the inquiry list;
- how an inquiry list request date is determined;
- circumstances under which the child's or adolescent's name is removed from an inquiry list; and
- the priority population of children who will be considered for a reserve capacity vacancy.

The rule aligns with, and implements, an amendment being submitted to CMS, which will provide reserved slots for children who are at imminent risk of relinquishment. Children who are at imminent risk of relinquishment will have priority placement on a YES Waiver inquiry list over children who are already in the custody of the state.

It is anticipated that upon CMS approval of statewide Medicaid expansion and the inclusion of foster care children, the number of individuals interested in receiving services through the YES Waiver will increase, making formal maintenance of each local mental health authority's (LMHA) YES Waiver inquiry list necessary. The approved YES waiver already requires LHMA's to maintain an updated inquiry list of waiver participants living in the local service area who are seeking services. This new rule will provide guidance on the responsibilities of LHMA's in maintaining their YES Waiver inquiry lists.

**Key Health Measures:**

When the YES Waiver is near capacity, a small percentage of slots will be held in reserve for children who are in the custody of their LAR, but who are at imminent risk of relinquishment, as determined by DSHS. Children who are determined to be at imminent risk of relinquishment will be prioritized on a YES Waiver inquiry list and will have enhanced access to YES Waiver services to prevent their relinquishment to state custody.

YES Waiver program staff will track the number, and use, of reserved capacity slots on an ongoing basis and reallocate slots in accordance with requirements of the CMS-approved waiver. YES Waiver program staff will utilize existing CMS-approved performance measures to monitor all clients served by the Waiver. YES program outcomes include:

- tracking the number and percent of individuals on a LMHA's inquiry list who are offered an assessment for eligibility on a first-come, first-served basis to ensure they are not waiting to be assessed;
- requiring LMHAs to establish and maintain a no-charge phone line, which operates specifically for the YES Waiver, separate and apart from other services offered through the LMHA; and
- requiring LMHAs to submit their inquiry list to DSHS at the end of every month for review.

**Summary of Input from Stakeholder Groups:**

The draft rule text was distributed to LMHAs and various advocacy groups in December 2015. Input from the Texas Council of Community Centers were largely focused on the operational aspects of maintaining the inquiry list, such as ensuring:

- that a child or adolescent's registration date on an inquiry list is in the accurate chronological date and time received; and
- that the state has considered an LMHA's responsibilities in returning calls received on their YES inquiry line that are received during holidays or weekends.

Operational aspects of maintaining the inquiry list and managing reserve capacity vacancy slots will be addressed in the YES Waiver policy manual.

**Proposed Motion:**

Motion to recommend HHSC approval for publication of rules contained in agenda item # 4.i.

<b>Approved by Assistant Commissioner/Director:</b>	Lauren Lacefield Lewis	<b>Date:</b>	01/27/2016
<b>Presenter:</b>	Trina Ita	<b>Program:</b>	MHSA Program Services
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<b>Approved by CPEA:</b>	Carolyn Bivens	<b>Date:</b>	1/25/2016

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

Subchapter A. YOUTH EMPOWERMENT SERVICES (YES)

New §419.7

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §419.7, concerning the Youth Empowerment Services (YES) Waiver program.

BACKGROUND AND PURPOSE

The department administers the YES Waiver program, which provides comprehensive home and community-based services for children, ages 3 through 18, up to a child's 19th birthday, at risk of institutionalization or out-of-home placement due to their serious emotional disturbance (SED). The current rules in §§419.1 - 419.6 and 419.8 implemented the YES Waiver as a pilot program under the waiver provisions of the federal Social Security Act, §1915(c) in 2009.

New §419.7 will establish a rule for the maintenance of a YES Waiver inquiry list and for the priority population for placement on the YES Waiver inquiry list. The new rule will ensure that interested individuals have timely and fair access to the Yes Waiver program and to reduce the number of children with SED relinquished to the conservatorship of the state. The approved YES waiver already requires local mental health authorities (LHMAs) to maintain an updated inquiry list of waiver participants living in the local service area who are seeking services. This new rule will provide guidance on the responsibilities of LHMAs in maintaining their YES Waiver inquiry list. Vacancies are offered to waiver participants on a first come, first served basis according to the chronological date of the waiver participant's registration on the waiver inquiry list.

In 2013, the 83rd Legislature directed the YES Waiver to expand statewide. The department anticipates the statewide Medicaid expansion of the YES Waiver in Spring 2016, pending approval by the Centers for Medicare and Medicaid Services (CMS). In addition, the YES Waiver program is seeking an amendment to the waiver, effective in Summer 2016, which will bring foster care children into the program and will provide for reserved capacity waiver vacancies, pending approval by CMS. Two essential elements of the department's operating responsibilities are: 1) managing waiver enrollment through the review of YES Waiver inquiry lists; and 2) monitoring waiver expenditures through the allocation, or reallocation, of waiver vacancy slots across the state.

New §419.7 will also reserve a small percentage of the total number of YES Waiver vacancies for reserve capacity and will define the population of children who will be considered for a reserve capacity vacancy. Children who are at imminent risk of relinquishment will have priority placement on a YES Waiver inquiry list over children who are already in the custody of the state.

SECTION-BY-SECTION SUMMARY

New 419.7 establishes a rule for the maintenance of the YES Waiver inquiry list. The new rule describes how a child or adolescent may submit a request to add their name on the inquiry list. The new rule describes how an inquiry list request date is determined. The proposed new rule also describes the circumstances under which the child's or adolescent's name is removed from an inquiry list. The

proposed new rule also describes the priority population of children who will be considered for a reserve capacity vacancy.

#### FISCAL NOTE

Lauren Lacefield Lewis, Associate Commissioner, Division for Mental Health and Substance Abuse Services, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Lewis has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Lewis has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be to ensure fair access to the YES Waiver program by interested individuals and to reduce the number of children with SED placed in conservatorship of the state.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Erin Oehler, Department of State Health Services, Mail Code, 2012, 8317 Cross Park Dr., Suite 350, Austin, Texas 78754, or by email to

Erin.Oehler@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The new section is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new section affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

Legend: Proposed New Rule  
Regular Print = Proposed new language

#### §419.7. Inquiry List.

(a) Inquiry List. A list, maintained by each LMHA, of children and adolescents as defined by §419.2 of this title (relating to Definitions) who are interested in receiving YES Waiver program services and who reside in the LMHA's service area.

(1) Only a child or adolescent or the child's or adolescent's LAR may place a child's or adolescent's name on the inquiry list.

(2) The LMHA must assign the child or adolescent a registration date on the inquiry list that is based on the chronological date and time the phone call or voice message requesting YES Waiver program services was received.

(b) Maintenance of Inquiry List. The LMHA must maintain an up-to-date inquiry list.

(1) The LMHA must remove a child's or adolescent's name from the inquiry list if it is documented that:

(A) the child or adolescent or LAR has requested in writing that the child or adolescent's name be removed from the inquiry list;

(B) the child or adolescent or LAR has declined in writing YES Waiver program services;

(C) the child or adolescent or LAR has not responded to the LMHA's notification of a waiver vacancy within 30 calendar days of the LMHA's notification of the vacancy;

(D) the child or adolescent has moved out of Texas; or

(E) the child or adolescent is deceased.

(2) If a child's or adolescent's name is removed from an inquiry list in accordance with paragraph (1) of this subsection, and if the child or adolescent, LAR, or LMHA requests that the child's or adolescent's name be reinstated on the inquiry list, the child or adolescent, LAR, or LMHA may request that the department review the circumstances under which the child's or adolescent's name was removed from the LMHA's inquiry list. At its discretion the department may:

(A) reinstate the child's or adolescent's name on the inquiry list according to the original date the child or adolescent or LAR requested the child's or adolescent's name be added in accordance with subsection (a) of this section; or

(B) add the child's or adolescent's name to the inquiry list according to the date the child or adolescent or LAR requested that the department review the circumstances under which the child or adolescent's name was removed.

(c) Denial of enrollment. The department shall remove a child's or adolescent's name from an LMHA's inquiry list if the department has denied the child's or adolescent's enrollment in the YES Waiver program and the child or adolescent or LAR has had an opportunity to exercise the child or adolescent's right to appeal the decision in accordance with §419.8 of this title (relating to Right to Fair Hearing) and did not appeal the decision, or appealed the decision and did not prevail.

(d) Reserve capacity. There are a percentage of vacancies in the YES Waiver program that are reserved for children or adolescents who are at imminent risk of being relinquished to state custody.

(1) If a child or adolescent whose name has been added to the LMHA's inquiry list must wait to be enrolled, then the LMHA must screen the child or adolescent for imminent risk of relinquishment.

(2) If the LMHA determines that the child or adolescent may be at imminent risk of relinquishment, the LMHA must complete the YES Waiver Reserve Capacity Screening Form and submit to the department for review.

(3) If the department determines that the child or adolescent is at imminent risk of relinquishment, the department must authorize the LMHA to complete the enrollment process within three business days.

(4) If a child or adolescent is denied reserve capacity, then the LMHA must assign the child or adolescent a registration date on the inquiry list that is based on the chronological date and time the phone call or voice message requesting YES Waiver program services was received in accordance with subsection (a)(2) of this section.